

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF OKLAHOMA

CHAD RAPHAEL HERNANDEZ,)	
)	
Plaintiff,)	
)	
vs.)	NO. CIV-07-91-HE
)	
GRADY COUNTY DETENTION)	
CENTER,)	
)	
Defendant.)	

ORDER

Plaintiff Chad Raphael Hernandez, a state prisoner appearing *pro se* and *in forma pauperis*, instituted this § 1983 action alleging his constitutional rights were violated by the defendant's failure to provide him with adequate medical care. Consistent with 28 U.S.C. §636(b)(1)(B), the matter was referred for initial proceedings to Magistrate Judge Bana Roberts, who has recommended that the action be dismissed without prejudice due to the plaintiff's failure to cure certain pleading deficiencies. The magistrate judge had advised the plaintiff that his complaint was deficient because he failed to allege that a specified person had deprived him of his constitutional rights. The named defendant was not, she noted, either a person subject to suit under § 1983 or a legal entity with the capacity to be sued. The plaintiff was directed to file an amended complaint by a specified date and was advised that failure to amend could result in the dismissal of the lawsuit.


The plaintiff subsequently advised the court by letter that he was being transferred to another facility and would not be able to write for about a month. The magistrate judge *sua sponte* extended the plaintiff's deadline to amend his complaint to May 3, 2007. When he

then failed to file an amended pleading, request an extension of time within which to do so, or demonstrate good cause for his failure to comply with the court's order, the magistrate judge issued her Report and Recommendation recommending the action's dismissal. The plaintiff failed to object to the Report and Recommendation and thus waived his right to appellate review of the issues it addressed. United States v. One Parcel of Real Property, 73 F.3d 1057, 1059-60 (10th Cir. 1996). *See* 28 U.S.C. § 636(b)(1)(C); LCvR72.1(a).

Accordingly, the court adopts Magistrate Judge Robert's Report and Recommendation, and **DISMISSES** the action without prejudice to refiling.

IT IS SO ORDERED.

Dated this 27th day of June, 2007.



JOE HEATON
UNITED STATES DISTRICT JUDGE